

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SAMUEL PALADA DUQUE JR., RN

Registered Nurse License No. 526669

Respondent.

Case No. 2007-288

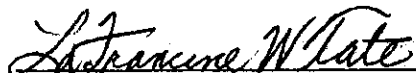
OAH No. L2007080273

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on April 20, 2008.

IT IS SO ORDERED March 20, 2008



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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BOARD OF REGISTERED NURSING  
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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**SAMUEL PALADA DUQUE, JR.**

Registered Nurse License No. RN 526669,

Respondent.

Case No. 2007-288

OAH No. L2007080273

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 14, 2007, in Los Angeles.

Shawn P. Cook, Deputy Attorney General, represented Complainant.

Samuel Palada Duque, Jr. (Respondent) was present and represented himself.

The record was closed and the matter was submitted at the conclusion of the hearing.

**FACTUAL FINDINGS**

1. On September 20, 1996, the Board of Registered Nursing (Board) issued Registered Nurse License Number 526669 to Respondent. The license is scheduled to expire on June 30, 2008.

2. Ruth Ann Terry, M.P.H., R.N. (Complainant), brought the Accusation in her official capacity as the Executive Officer of the Board. Respondent submitted a Notice of Defense, which requested the hearing that ensued.

3. (A) On March 10, 2006, in the Superior Court of California, County of Orange, case number 05NF4498, Respondent pled guilty to violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a felony. The court deferred entry of the judgment and allowed Respondent to enter into a drug diversion program. Due to Respondent's arrest and conviction described in Factual Finding 4 below, the hearing on whether to enter a judgment of dismissal in this case has been postponed until May 29, 2008.



8. Respondent appears to have taken a turn for the better more recently. He completed 29 days of an intensive, in-patient substance abuse treatment program at Whiteside Manor of Riverside in October 2007. Upon his entry into that program, Respondent submitted to one random drug test in which no controlled substances were detected. On October 31, 2007, Respondent admitted himself into the Pacifica House Recovery Center (Pacifica), which is an intensive, in-patient substance abuse treatment program lasting six to nine-months. Respondent remains in residence there and has pledged to complete the program. Respondent is currently active in a 12-step program at Pacifica; he is now on the third step. During the hearing, Respondent was candid in admitting to his criminal conduct and his addiction. Through his demeanor and testimony at the hearing, it appears that Respondent has recently realized the depths of his addiction and has now earnestly begun to fight for his sobriety.

9. The Board incurred reasonable costs in the investigation and enforcement of the case in the amount of \$5,831.50.

### LEGAL CONCLUSIONS

1. **FIRST CAUSE FOR DISCIPLINE (Conviction of Crime Involving Drugs).** Respondent is subject to disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a),<sup>1</sup> on the grounds of unprofessional conduct as defined in section 2762, subdivision (c), in that on May 31, 2006, Respondent was convicted of a criminal offense involving a controlled substance and dangerous drug, methamphetamine. (Factual Finding 4.)

2. **SECOND CAUSE FOR DISCIPLINE (Conviction of Substantially Related Crime).** Respondent is subject to disciplinary action pursuant to sections 2761, subdivision (f), and 490, and California Code of Regulations, title 16, section 1444, in that on May 31, 2006, Respondent was convicted of a criminal offense involving a controlled substance and dangerous drug, methamphetamine, an offense which is substantially related to the qualifications, functions, or duties of a registered nurse. (Factual Finding 4.)

3. **THIRD CAUSE FOR DISCIPLINE (Unprofessional Conduct- Possession of Controlled Substance/Dangerous Drug).** Respondent is subject to disciplinary action pursuant to section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in section 2762, subdivision (a), in that on May 29, 2006, Respondent possessed methamphetamine, a controlled substance and dangerous drug. (Factual Finding 3.)

4. **FOURTH CAUSE FOR DISCIPLINE (Violations of Chapter- Controlled Substance).** Respondent is subject to disciplinary action pursuant to section 2761, subdivision (d), for violating section 2761, subdivisions (a) and (f), in conjunction with section 2762, subdivisions (a) and (c), in that on May 29, 2006, Respondent committed an

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise noted.

offense involving possessing and/or obtaining the controlled substance and/or dangerous drug, methamphetamine, in violation of Health and Safety Code sections 11170 and 11377. (Factual Finding 3.)

5. FIFTH CAUSE FOR DISCIPLINE (Unprofessional Conduct- Possession of Controlled Substances/Dangerous Drugs). Respondent is subject to disciplinary action pursuant to sections 492 and 2762, subdivision (a), in that on October 26, 2005, Respondent possessed a controlled substance, methamphetamine. (Factual Finding 3.)

6. SIXTH CAUSE FOR DISCIPLINE (Unprofessional Conduct- Use of Controlled Substances/Dangerous Drugs). Respondent is subject to disciplinary action pursuant to sections 492 and 2762, subdivision (b), because Respondent, by his own admission, used a controlled substance, methamphetamine, in 2004, 2005 and 2007. (Factual Findings 3 and 7.)

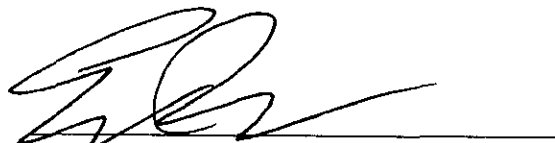
7. DISPOSITION. The cause for discipline established in this case against Respondent indicates that he has a serious drug addiction. By Respondent's own account, he has had a difficult time trying to recover. He did not complete the Board's diversion program; and although he completed a criminal court drug diversion program, he thereafter had a relapse. Respondent has not yet successfully completed the requirements of either of his two criminal cases, in that he remains on probation in one case and a dismissal in his drug diversion case has been delayed until May 2008. Respondent has a fairly recent date of sobriety. He has only recently completed a 29 day in-patient treatment and he is now in the midst of another six-month in-patient program. In sum, Respondent has yet to demonstrate that he has fully embraced any drug program which he has attended. Respondent has not worked in the nursing field since 2005, which is about the time his addiction began to consume him. These are all factors that the Board in its Guidelines views as paramount in determining the sobriety of a nurse with a drug addiction. On the other hand, Respondent has no prior record of discipline and he has recently begun to make encouraging progress battling his addiction. He should be applauded for those efforts and his recent sobriety. However, the potential harm done by a licensed nurse while impaired by drugs is ever present and could be catastrophic. Respondent's failure to establish a sufficient level of rehabilitation from his drug addiction does not provide satisfactory protection against the potential for such harm. Under all of these circumstances, it was not established that placing Respondent on probation would be consistent with protecting the public health, welfare and safety. (Factual Findings 1-8.)

8. COSTS. Section 125.3 provides, in pertinent part, that a licensee found to have committed a violation of an applicable licensing act shall pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. It was established that Respondent has violated provisions of the Nursing Practice Act and that the Board has incurred reasonable costs in the amount of \$5,831.50. (Factual Finding 9.)

ORDER

Registered Nurse License No. 526669, issued to Samuel Palada Duque, Jr., is revoked. Respondent shall pay the Board of Registered Nursing costs in the amount of \$5,831.50 pursuant to Business and Professions Code section 125.3.

Dated: January 31, 2008

A handwritten signature in black ink, appearing to read 'Eric Sawyer', is written over a horizontal line.

ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General  
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7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 SAMUEL PALADA DUQUE JR.  
1140 Indian Summer Ave.  
La Puente, CA 91744

14 Registered Nurse License No. 526669

15 Respondent.

Case No. 2001-288

O.A.H. No.

**ACCUSATION**

16  
17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely  
20 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
21 of Consumer Affairs (Board).

22 2. On or about September 20, 1996, the Board issued Registered Nurse  
23 License No. 526669 to Samuel Palada Duque Jr. (Respondent). The Registered Nurse License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 June 30, 2008, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board under the authority of the  
28 following laws. All Section references are to the Business and Professions Code unless noted.

1           4.     Section 2750 provides, in pertinent part, that the Board may discipline any  
2 licensee, including a licensee holding a temporary or an inactive license, for any reason provided  
3 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4           5.     Section 2764 provides, in pertinent part, that the expiration of a license  
5 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
6 licensee or to render a decision imposing discipline on the license. Under section 2811,  
7 subdivision (b), the Board may renew an expired license at any time within eight years after the  
8 expiration.

9           6.     Section 2761 states, in pertinent part:

10           "The board may take disciplinary action against a certified or licensed nurse or  
11 deny an application for a certificate or license for any of the following:

12           "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13           . . . .

14           "(d) Violating or attempting to violate, directly or indirectly, or assisting in or  
15 abetting the violating of, or conspiring to violate any provision or term of this chapter [the  
16 Nursing Practice Act] or regulations adopted pursuant to it.

17           . . . .

18           "(f) Conviction of a felony or of any offense substantially related to the  
19 qualifications, functions, and duties of a registered nurse, in which event the record of the  
20 conviction shall be conclusive evidence thereof. . . ."

21           7.     Section 2762 states, in pertinent part:

22           "In addition to other acts constituting unprofessional conduct within the meaning  
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
24 under this chapter to do any of the following:

25           "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
26 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
27 or administer to another, any controlled substance as defined in Division 10 (commencing with  
28

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1 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
2 defined in Section 4022.

3 "(b) Use any controlled substance as defined in Division 10 (commencing with  
4 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as  
5 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or  
6 injurious to himself or herself, any other person, or the public or to the extent that such use  
7 impairs his or her ability to conduct with safety to the public the practice authorized by his or her  
8 license.

9 "(c) Be convicted of a criminal offense involving the prescription, consumption,  
10 or self-administration of any of the substances described in subdivisions (a) and (b) of this  
11 section, or the possession of, or falsification of a record pertaining to, the substances described in  
12 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
13 thereof. . . ."

14 8. Section 490 states:

15 "A board may suspend or revoke a license on the ground that the licensee has been  
16 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
17 of the business or profession for which the license was issued. A conviction within the meaning  
18 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
19 contendere. Any action which a board is permitted to take following the establishment of a  
20 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
21 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
22 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
23 Penal Code."

24 9. Section 492 states:

25 "Notwithstanding any other provision of law, successful completion of any  
26 diversion program under the Penal Code, or successful completion of an alcohol and drug  
27 problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12  
28 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2

1 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in  
2 that division, from taking disciplinary action against a licensee or from denying a license for  
3 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
4 record pertaining to an arrest.

5 "This section shall not be construed to apply to any drug diversion program  
6 operated by any agency established under Division 2 (commencing with Section 500) of this  
7 code, or any initiative act referred to in that division."

8 10. Section 493 provides, in pertinent part, that the record of conviction of the  
9 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
10 and the board may inquire into the circumstances surrounding the commission of the crime in  
11 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
12 qualifications, functions, and duties of the licensee in question.

13 11. California Code of Regulations, title 16, section 1444, states, in pertinent  
14 part:

15 "A conviction or act shall be considered to be substantially related to the  
16 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
17 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
18 public health, safety, or welfare. . . ."

19 12. Section 118, subdivision (b), provides that the suspension / expiration /  
20 surrender / cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
21 disciplinary action during the period within which the license may be renewed, restored, reissued  
22 or reinstated.

23 13. Section 125.3 provides, in pertinent part, that the Board may request the  
24 administrative law judge to direct a licensee found to have committed a violation or violations  
25 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
26 enforcement of the case.

#### 27 STATE DRUG STATUTES

28 14. A "dangerous drug" or "dangerous devise" is any drug or device that is

1 unsafe for self-use within the meaning of Section 4022 in that it requires a prescription under  
2 federal or state law.

3 15. Section 4060 provides, in pertinent part, that no person shall possess any  
4 controlled substance except that furnished to a person upon the prescription of a physician or a  
5 dentist.

6 16. Health and Safety Code section 11170 states that "No person shall  
7 prescribe, administer, or furnish a controlled substance for himself."

8 17. Health and Safety Code section 11550 (a) states in pertinent part:  
9 "(a) No person shall use, or be under the influence of any controlled substance which is (1)  
10 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
11 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054,  
12 specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of  
13 subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug  
14 classified in Schedule III, IV, or V, except when administered by or under the direction of a  
15 person licensed by the state to dispense, prescribe, or administer controlled substances. . . ."

16 CONTROLLED SUBSTANCE / DANGEROUS DRUG

17 18. Methamphetamine is a Schedule II controlled substance as designated by  
18 Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug  
19 pursuant to Business and Professions Code section 4022.

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of Crime Involving Drugs)

22 19. Respondent is subject to disciplinary action under Section 2761,  
23 subdivision (a) on the grounds of unprofessional conduct as defined in Section 2762, subdivision  
24 (c), in that on or about May 31, 2006, Respondent was convicted of a criminal offense involving  
25 a controlled substance and dangerous drug, methamphetamine, as follows:

26 a. On or about May 31, 2006, in a criminal proceeding entitled *The People of*  
27 *the State of California v. Samuel Palada Duque* in Los Angeles County Superior Court,  
28 El Monte Courthouse, Case No. 6RI03290, Respondent was convicted for on a plea of *nolo*

1 *contender* for violating Health and Safety Code section 11377(a) (possession of a controlled  
2 substance, to wit, Methamphetamine), a misdemeanor.

3           b.       The circumstances of the conviction are that on or about May 29, 2006,  
4 following a traffic stop of Respondent's vehicle, Los Angeles County Sheriff's Deputies searched  
5 the vehicle and found a baggie containing Methamphetamine, a controlled substance and  
6 dangerous drug. Respondent was arrested and the Methamphetamine was booked into evidence.

7                               SECOND CAUSE FOR DISCIPLINE

8                               (Conviction of Substantially Related Crime)

9           20.       Respondent is subject to disciplinary action under Sections 2761,  
10 subdivision (f), on the grounds of unprofessional conduct, and Section 490, as defined in  
11 California Code of Regulations, title 16, section 1444, in that on or about May 31, 2006,  
12 Respondent was convicted of a criminal offense involving a controlled substance and dangerous  
13 drug, Methamphetamine, an offense which is substantially related to the qualifications, functions,  
14 or duties of a registered nurse, as more fully set forth in paragraph 19.

15                               THIRD CAUSE FOR DISCIPLINE

16                               (Unprofessional Conduct - Possession of Controlled Substance / Dangerous Drug)

17           21.       Respondent is subject to disciplinary action under Section 2761,  
18 subdivision (a), on the grounds of unprofessional conduct, as defined in Section 2762,  
19 subdivision (a), in that on or about May 29, 2006, Respondent possessed the controlled substance  
20 and/or dangerous drug, Methamphetamine, as more fully describe above in paragraphs 19 and 20.

21                               FOURTH CAUSE FOR DISCIPLINE

22                               (Violations of Chapter - Controlled Substance)

23           22.       Respondent is subject to disciplinary action under Section 2761,  
24 subdivision (d), for violating Sections 2761, subdivisions (a) and (f), in conjunction with  
25 Section 2762, subdivisions (a) and (c), in that on or about May 29, 2006, Respondent committed  
26 an offense involving the possession and/or obtaining the controlled substance and/or dangerous  
27 drug, Methamphetamine, in violation of Health and Safety Code sections 11170 and 11377, as  
28 more fully described above in paragraphs 19 through 21.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Possession of Controlled Substances/Dangerous Drugs)

3 23. Respondent is subject to disciplinary action under Sections 492 and 2762,  
4 subdivisions (a), in that on or about October 26, 2005, Respondent possessed a controlled  
5 substance, to wit, Methamphetamine. The circumstances are as follows:

6 a. On or about October 26, 2005, La Habra Police Department officers  
7 performed a traffic stop on Respondent's vehicle. The officers search Respondent's vehicle with  
8 Respondent's permission. The officers found and tested 0.28 grams of Methamphetamine, a  
9 controlled substance and dangerous drug, on the far-left side of the floorboard on the driver's  
10 side of the vehicle. Respondent admitted to the officers that he used 'Meth'(Methamphetamine)  
11 in the past and the last time about one month previously. Respondent admitted he knew the  
12 'Meth' was in his vehicle and stated it was from a party.

13 b. On or about March 10, 2006, Respondent pled guilty to violating Health  
14 and Safety Code section 11377(a) in the criminal proceeding entitled *The People of the State of*  
15 *California v. Samuel Palada Duque Jr*, Orange County Superior Court, North Justice Center -  
16 Fullerton, Case No. 05NF4498. The Court deferred entry of the judgment and allowed  
17 Respondent to enter into a diversion program.

18 SIXTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct - Use of Controlled Substances/Dangerous Drugs)

20 24. Respondent is subject to disciplinary action under Sections 492 and 2762,  
21 subdivisions (b), in that in or about 2005, Respondent used a controlled substance, to wit,  
22 Methamphetamine. The circumstances are as set forth in paragraph 23 and is incorporated herein  
23 by reference.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
26 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


27 1. Revoking or suspending Registered Nurse License No. 526669, issued to  
28 Samuel Palada Duque Jr.

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2. Ordering Samuel Palada Duque Jr. to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 4/18/07

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
  
Complainant

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